

Investigation by the Department of Telecommunications and Energy on its own motion into establishing intraLATA presubscription requirements for non-Bell Operating Company local exchange carriers and local exchange resellers, pursuant to § 251(b)(3) of the Telecommunications Act of 1996.

## VOTE TO OPEN INVESTIGATION

### I. INTRODUCTION

The Telecommunications Act of 1996 ("Act"), 47 U.S.C. § 251(b)(3), requires local exchange carriers ("LECs") to provide intraLATA and interLATA presubscription (also referred to as "toll dialing parity"). With toll dialing parity, telephone customers can preselect a provider of toll service and have their calls routed automatically to that provider without having to dial extra digits. Under the Act, Bell Operating Company ("BOC") LECs are required to provide toll dialing parity coincident with the provision of in-region, interLATA or in-region, interstate toll services in that state. 47 U.S.C. § 271(e)(2)(A). The Federal Communications Commission's ("FCC") Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, FCC 96-33, August 8, 1996 ("Second Report and Order"), mandated the availability of both intraLATA and interLATA toll dialing parity no later than February 8, 1999. Second Report and Order at ¶ 62. LECs other than BOCs that provide in-region, interLATA or in-region, interstate toll services in a state on or before August 8, 1997, had been required by the FCC's rules to implement intraLATA and interLATA toll dialing parity by August 8, 1997. Second Report and Order at ¶ 61. However, on August 22, 1997, the U.S. Court of Appeals for the Eighth Circuit vacated the FCC's intrastate dialing parity rules contained in the Second Report and Order, concluding that the FCC exceeded the scope of its jurisdiction in promulgating rules that govern intrastate dialing parity, which the court found lies with state jurisdiction. People of the State of California v. FCC, 124 F. 3rd 934 (8th Cir. 1997). The effect of the court's decision is to give state commissions exclusive jurisdiction over the implementation of intrastate dialing parity. On May 28, 1997, the Department approved a dialing parity plan for New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"). NYNEX, D.P.U./D.T.E. 96-106 (1997).<sup>(1)</sup>

Several competitive local exchange carriers ("CLECs") have filed intraLATA presubscription ("ILP") plans for Department approval pursuant to the Second Report and Order at ¶ 62: Teleport Communications- Boston, December 4, 1996; MFS Intelenet of Massachusetts, Inc., December 4, 1996; RCN Telecom Services of Massachusetts, Inc.

d/b/a RCN of New England, June 17, 1997; ACC National Telecom Corp., July 29, 1997; WinStar Wireless of Massachusetts, July 30, 1997.<sup>(2)</sup>

Before the Eighth Circuit's decision, the Department issued a notice on July 14, 1997, seeking comments on the ILP plans of MFS, Teleport, Taconic and RCN, and stating the Department's proposed intent to evaluate non-BOC LEC ILP plans for conformity with the FCC's Second Report and Order, and with the general policies established in D.P.U. 96-106 (Notice at 1). Initial comments were filed by the New England Cable Television Association, Inc. ("NECTA"), MCI Telecommunications Corporation ("MCI"), and Bell Atlantic, and reply comments were filed by MFS and RCN. The commenters argued that the Department should not apply the same ILP requirements on CLECs that are required of Bell Atlantic, given differing market positions. Bell Atlantic, however, argued that there should be consistency among all LECs, regardless of market position. The commenters also argued that CLEC requirements should be established in a generic proceeding and urged the Department to open such a proceeding.

## II. VOTE TO OPEN AN INVESTIGATION

As noted above, the Act obligates all LECs to provide dialing parity to "competing providers of telephone exchange service and telephone toll service." 47 U.S.C. § 251(b)(3). Pursuant to the Eighth Circuit's decision, state commissions now have exclusive jurisdiction over the implementation of intrastate ILP by non-BOC LECs. The Act does not impose a specific deadline on non-BOC LECs for implementation of ILP. Many CLECs have or will soon begin operations in Massachusetts. Thus, we find that it is necessary and appropriate for the Department to adopt ILP standards for non-BOC LECs, so that customers can be assured of the ability to presubscribe to the toll carrier of their choice regardless of their LEC. Rather than review ILP plans of non-BOC LECs on a piece-meal basis, we believe it is more efficient to establish consistent ILP standards in a generic proceeding. The Department will require compliance with the ILP standards adopted in this proceeding by those non-BOC LECs that have already implemented intrastate ILP in Massachusetts. In addition, the Department will consider what, if any, ILP requirements (e.g., customer notification requirements) should be adopted for local exchange service resellers. Accordingly, we vote to open an investigation into establishing ILP requirements for non-BOC LECs, including resellers of local exchange service.

Within five days of the date of this Order, the Secretary of the Department will publish legal notice (see attachment) of this proceeding. Within seven days of the date of this Order, the Secretary will distribute a copy of the legal notice to the persons identified on the distribution list prepared for this inquiry to include, among others, all registered or certified telecommunications service providers operating in the Commonwealth, the parties to D.P.U./D.T.E. 96-106 and 96-106-A, and the Attorney General of the Commonwealth. The Department will hold a public hearing and procedural conference in this proceeding beginning at 10:00 a.m., on March 13, 1998, at the Department's offices in Boston.

### III. ORDER

Accordingly, after due consideration, the Department hereby

VOTES: To open an investigation into establishing intraLATA presubscription requirements for non-Bell Operating Company local exchange carriers and resellers of local exchange services; and it is

FURTHER ORDERED: That within five days of the date of this Order, the Secretary of the Department shall publish the accompanying legal notice in the Boston Globe, the Worcester Telegram, and the Springfield Union-News; and it is

FURTHER ORDERED: That within seven days of the date of this Order, the Secretary of the Department shall serve a copy of the attached Order of Notice on the persons identified on the service list prepared for this inquiry to include, among others, all

registered or certified telecommunications service providers operating in the Commonwealth, the parties to D.P.U./D.T.E. 96-106 and 96-106-A, and the Attorney General of the Commonwealth.

By Order of the Department,

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Janet Gail Besser, Acting Chair

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John D. Patrone, Commissioner

James Connelly, Commissioner

1. The Department currently is reviewing Bell Atlantic's compliance filing from that docket in D.P.U./D.T.E. 96-106-A.

2. In addition, Taconic Telephone Corp. ("Taconic"), an incumbent LEC ("ILEC"), provided the Department with a copy of the ILP plan that it has implemented in New York and that would apply to its Hancock, Massachusetts customers. Taconic indicated that it would file a formal petition with the Department when so required.